

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12295 of 2021

1. Saneha Kumari Wife of Rajiv Ranjan Paswan Resident of Ward no. 3, near Surya Mandir Road, Ward No. 3, P.O. and P.S.- Kochas, District- Rohtas at Sasaram, presently Chief Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
2. Vibha Devi Wife of Sri Dharmendra Kumar Pandey Resident of Ward No. 4, Aadarsh Nagar, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
3. Nisha Kumari Wife of Govind Kumar Gupta Resident of Ward No. 5, Gandhi Nagar, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
4. Dharamshila Devi Wife of Manoj Chakravarti Resident of Ward No. 13, Chhawani, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
5. Kashi Nath Singh Son of Ramvyas Singh Resident of Ward No. 9, Parasia, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
6. Madina Khatoon Wife of Md. Naushad Resident of Ward No. 12, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
7. Mundrika Singh Son of Late Bhimal Singh Resident of Ward No. 7, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
8. Jai Prakash Chauhan Son of Chandarma Chauhan Resident of Ward No. 2, Bahtutia Tola, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
9. Rajwanti Devi Wife of Shivilal Sah Resident of Ward No. 10, Shivaji Nagar, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
10. Anjana Devi Wife of Ashok Dueby Resident of Ward No. 16, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
11. Birendra Chaudhary Son of Late Ram Bachan Chaudhary Resident of Ward No. 11, near Dinara Road Petrol Pump, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
12. Anshu Choudhary Son of Ram Sakal Choudhary Resident of Ward No. 14, Chanakya Nagar, P.O. and P.S.- Kochas, District- Rohtas at Sasaram. the Ward Councilor of Nagar Panchayat, Kochas, P.O. and P.S.- Kochas,



District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary Urban Development and Housing Department, Government of Bihar, Patna.
3. The State Election Commission (Municipality) Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The Secretary, State Election Commission (Municipality), Sone Bhawan, Birchand Patel Path, Patna.
5. The District Magistrate Rohtas at Sasaram, District- Rohtas at Sasaram.
6. The Executive Officer Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
7. Ruby Devi Wife of Arun Kumar Ojha The Ward Councilor of Kochas Nagar Panchayat, through the Executive Officer, Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
8. Umesh Kumar Singh Son of Hira Prasad Singh The Ward Councilor of Kochas Nagar Panchayat, through the Executive Officer, Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
9. Mumtaz Idrashin Son of Mustakim Khalifa The Ward Councilor of Kochas Nagar Panchayat, through the Executive Officer, Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.
10. Kusum Devi Wife of not known to the petitioners The Ward Councilor of Kochas Nagar Panchayat, through the Executive Officer, Nagar Panchayat, Kochas, P.O. and P.S.- Kochas, District- Rohtas at Sasaram.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 11164 of 2021

Rubi Devi Wife of Arun Kumar Ojha Resident of Village- Ojhawalia, Ward No. 1, P.S.- Kochas, District- Rohtas (Sasaram).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate-cum- District Election Officer (Municipality), Rohtas (Sasaram).
3. The Executive Officer, Nagar Panchayat, Kochas, District- Rohtas (Sasaram).
4. The Sub- Divisional Officer, Sasaram, District- Rohtas.
5. The Secretary, State Election Commission, Bihar, Patna.



6. Shri Jai Prakash Chauhan Son of Chandrama Resident of Village- Bahtutia, Ward No. 2, P.O. and P.S.- Kochas, District- Rohtas.
7. Smt. Sneha Kumari Wife of Malik Paswan Resident of Kochas Ward No. 3, P.O. and P.S.- Kochas, District- Rohtas.
8. Smt. Bibha Devi Wife of Sanjay Pandey Resident of Kochas Ward No. 4, P.O. and P.S.- Kochas, District- Rohtas.
9. Smt. Nisha Kumar Wife of Govind Kumar Gupta Resident of Kochas Ward No. 5, P.O. and P.S.- Kochas, District- Rohtas.
10. Shri Umesh Kumar Singh Son of Hira Prasad Singh Resident of Ward No. 6, North Patel Nagar, Kochas, P.O. and P.S.- Kochas, District- Rohtas.
11. Shri Mundrika Singh Son of Late Bimal Singh Resident of Ward No. 7, Kochas, P.O. and P.S.- Kochas, District- Rohtas.
12. Mumtaz Idrisi Son of Mustaqim Idrisi Resident of Village- Parasia, Ward No. 8, P.O. and P.S.- Kochas, District- Rohtas.
13. Shri Kashinath Singh Son of Ram Vyas Singh Resident of Village- Parasia, Ward No. 9, P.O. and P.S.- Kochas, District- Rohtas.
14. Smt. Rajbanshi Devi Wife of Shiv Lal Singh Resident of Ward No. 10, Kochas, P.O. and P.S.- Kochas, District- Rohtas.
15. Shri Birendra Chaudhary Son of Ram Bachan Chaudhary Resident of Ward No. 11, Near Petrol Pump, Kochas, P.O. and P.S.- Kochas, District- Rohtas.
16. Smt. Madina Khatoon Wife of Naushad Alam Resident of Ward No. 12, Purani Bazar Kochas, P.O. and P.S.- Kochas, District- Rohtas.
17. Smt. Dharmshila Devi Wife of Manoj Chakraborty Resident of Ward No. 13, Kochas, P.O. and P.S.- Kochas, District- Rohtas.
18. Shri Anshu Chaudhary Son of Rohit Chauhan Resident of Kochas Ward No. 14, P.O. and P.S.- Kochas, District- Rohtas.
19. Smt. Kusum Devi Wife of Nathuni Sah Resident of Kochas, Ward No. 15, P.O. and P.S.- Kochas, District- Rohtas.
20. Smt. Anjan Devi Wife of Ashok Dubey Resident of Kochas, Ward No. 16, P.O. and P.S.- Kochas, District- Rohtas.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12295 of 2021)

For the Petitioner/s : Mr.Shashi Bhushan Kumar Manglam
For the State : Mr.Abbas Haider (Sc6)
For the S.E.C. : Mr. Amit Srivastava. Sr. Adv.
Mr. Girish Pandey
For Res. No. 3 : Mr. Ashok Kumar Singh

(In Civil Writ Jurisdiction Case No. 11164 of 2021)

For the Petitioner/s : Mr.Ansul
For the State : Mr. Suresh Kumar, AC to GP 1
For res. No. 6-9/11/13-18 & 20: Mr. S. B. K. Manglam
For S.E.C. : Mr. Amkit Srivastava, Sr. Adv.
Mr. Sanjeev Nikes



CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 13-08-2021 Heard learned Counsel for the parties concerned.

Since common question of law and fact is involved in these two writ applications, both writ applications are being taken up together with the consent of the parties.

The petitioners of CWJC No. 12295 of 2021 has prayed for directing the respondent no. 5- the District Magistrate, Rohtas, to call the meeting of the elected Councilors of the Kochas Nagar Panchayat for the purposes of election to the post of the Deputy Chief Councilor for Kochas Nagar Panchayat, which has fallen vacant because of removal of respondent no. 7-Ruby Devi (petitioner in CWJC No. 11164 of 2021). The petitioners of CWJC No. 12295 of 2021 have been impleaded as respondents in CWJC No. 11164 of 2021.

The petitioner of CWJC No. 11164 of 2021 has challenged the No Confidence Motion, dated 03.05.2021, carried out by the Kochas Nagar Panchayat against the petitioner, by which she has been removed from the post of Deputy Chief Councilor of the Kochas Nagar Panchayat, on the basis of the No Confidence Motion passed against her. The petitioner has also sought for a direction against the respondents restraining them from holding fresh election for the post of



Deputy Chief Councilor, Kochas Nagar Panchayat.

The brief facts of the case is that the petitioner Ruby Devi was elected as Deputy Chief Councilor, Kochas Nagar Panchayat, on 22.04.2019. On 27.04.2021, the twelve private respondents of CWJC No. 11164 of 2021 sent a requisition to respondent no. 7, the Chief Councilor of Kochas Nagar Panchayat, requesting her to convene a special meeting for No Confidence Motion against the petitioner, Ruby Devi. Thereafter, the respondent no. 7 issued a letter, vide Memo No. 480, dated 28.04.2021, directing respondent no. 3-the Executive officer, Nagar Panchayat, Kochas, to convene a special meeting on 03.05.2021, at 12 noon, for No Confidence Motion against the petitioner. Accordingly, in the special meeting held on 03.05.2021, the No Confidence Motion against the petitioner, Ruby Devi, was passed by majority of votes and she was removed from the post of Deputy Chief Councilor.

Mr. Ansul, learned Counsel for the petitioner, Ruby Devi, submits that the special meeting for consideration of No Confidence Motion against the petitioner was called in violation of the statutory provisions of law and referring to Rule 2 (i) of the Bihar Municipal No Confidence Motion Process Rules, 2010 (herein after referred to as '2010 Rules'), submits that



Rule 2 (i) of the 2010 Rules specifically provides as follows:

“2. No Confidence Motion brought under Section 25 (4) of the Bihar Municipal Act, 2007 against the Chief Councillor/Deputy Chief Councillor shall be considered and disposed of as per the following process:-

(i) To remove the Chief Councillor/the Deputy Chief Councillor, a special meeting of the elected Councillors shall be called for. Such special meeting shall be requisitioned and signed by not less than one third of the total numbers of the elected Councillors which shall be given to the Chief Councillor. Notice shall be issued by the Chief Councillor for the special meeting of the Urban Local Body within seven days from receipt of requisition and the meeting shall be convened within fifteen days of the date of issuance of the notice.”

Learned Counsel for the petitioner, Ruby Devi, next submits that the notice has been issued, for convening the special meeting for consideration of No Confidence Motion, by the Executive Officer and not by the Chief Councilor of the Kochas Nagar Panchayat. He further submits that as per Rule 2 (iv) of the 2010 Rules, the notice for considering No Confidence Motion against the Chief Councilor/Deputy Chief Councilor



shall clearly contain the reasons/allegations on which the No Confidence Motion is to be brought, but the notice, dated 28.04.2021, did not contain any reasons/ allegations against the petitioner, Ruby Devi. He further, referring to Section 49 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act'), submits that notice regarding meeting must be sent at the registered address of each Councilor at least 72 hours before the time fixed for such meeting, but the notice for convening special meeting for consideration No Confidence Motion against the petitioner, Ruby Devi, has not been served upon the petitioner before 72 hours inasmuch as from perusal of the notice (Annexure-2), it would be evident that the notice is dated 30.04.2021 and the special meeting was fixed on 03.05.2021, at 12 noon, but the notice was sent to the address of the petitioner, Ruby Devi, on 30.04.2021, at 05.25 PM. As such, the statutory requirement of service of notice before 72 hours of the special meeting was not adhered to by the respondents. In view of the aforesaid, learned Counsel for the petitioner, Ruby Devi, submits that the removal of the petitioner from the post of the Deputy Chief Councilor on the basis of the No Confidence Motion held on 03.05.2021 is completely illegal and in violation of the mandatory provisions of law, as such, the same is fit to be



set aside and as per the second proviso to Section 25 (4) of the Act, the respondents may be restrained from calling a No Confidence Motion again within one year from the date of first No Confidence Motion.

On the other hand, learned Senior Counsel for the State Election Commission and Mr. S. B. K. Manglam, learned Counsel appearing on behalf of the petitioners in CWJC No. 12295 of 2021 and private respondents in CWJC No. 11164 of 2021, referring to the notice (Annexure-2), submit that from perusal of the contents of the notice, it would be clear that meeting has been convened by the Chief Councilor and the Executive Officer was only directed to serve the notice upon all the Councilors. Accordingly, the submission is that there is no violation of Rule 2 (i) of the 2010 Rules. They further submit that in the notice, dated 30.04.2021, copy of the allegation against the Deputy Chief Councilor along with reasons were attached as enclosures and the contention of the petitioner that notice did not contain any allegation and/or reason for convening the special meeting for considering No Confidence Motion, on the face of the notice is not correct. Further, they conceded on the point that notice was admittedly not served upon the Deputy Chief Councilor before 72 hours of the date



and time of the special meeting. However, they oppose the prayer of the petitioner, Ruby Devi, regarding restraining the respondents from holding fresh meeting for considering No Confidence Motion and submit that bar prescribed under the second proviso to Section 25 (4) of the Act shall not apply due to the fact that there was fundamental defect in the notice regarding convening No Confidence Motion and further in the similar circumstances, a co-ordinate Bench of this Court, in CWJC No. 4165 of 2021, while holding the notice convening the special meeting as bad and unsustainable, allowed for issuance of a fresh notice for convening special meeting for No Confidence Motion in accordance with law.

After having heard learned Counsel for the parties concerned and upon taking into consideration the rival submissions and the fact that clear 72 hours notice was not given to the petitioner, Ruby Devi, as per the requirement of law, I am of the considered opinion that the notice convening special meeting, dated 30.04.2021 (Annexure-2) is unsustainable in law. Accordingly, the impugned decision taken in the special meeting, dated 03.05.2021 (Annexure-1) is hereby quashed.

In view of the fact that the notice, for convening the



special meeting, was not in accordance with the statutory provisions and in view of the order, passed in CWJC No. 4165 of 2021, the respondents are at liberty to convene a fresh special meeting for considering the No Confidence Motion in accordance with law.

This two writ applications are, accordingly disposed of.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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